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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/967,250	09/28/2001	Michael J. Mullane	MJM-50X	6233

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EXAMINER
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AMIRI, NAHID

ART UNIT	PAPER NUMBER
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3635

DATE MAILED: 02/24/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/967,250

Applicant(s)

MULLANE, MICHAEL J.

Examiner

Nahid Amiri

Art Unit

3635

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 03 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 20 December 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-3 and 9-25 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-3, 9-17 and 21-25 is/are allowed.
- 6) ☒ Claim(s) 18 and 19 is/are rejected.
- 7) ☒ Claim(s) 20 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 28 September 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 103***

Claim 18 stand rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent No. 5,471,799 Smeja in view of US Patent No. 4,467,581 Francovitch, as set forth in previous office action.

In regard to claim 18: Smeja discloses the claimed invention Figs. 1-5, column 2, lines 49-60, a snow guard 10 fastened to downwardly inclined roof 11 having a base 12 and snow intersecting upstanding members 20 with at least one predetermined angle one to another, column 1, lines 65-67, snow guard system can be installed at any orientation, column 3, lines 41-43, the base 12 is preferably square although it could be other shapes. Francovitch teaches Figs. 1-2, column 2, lines 44-50, a resilient metal body 1 having a disc shaped base for anchoring roofing membrane. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the base of Smeja to be round in order to reduce the cost of the snow guard by reducing the material required for the base as taught by Francovitch.

Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent No. 5,471,799 Smeja in view of US Patent No. 4,467,581 Francovitch, as set forth in previous office action.

In regard to claim 19: Smeja discloses the claimed invention snow guard 10 wherein the intersecting of the members 20 is center of the base 12 and the angle is normal with four of the upstanding members 20 disposed along two planes.

### ***Allowable Subject Matter***

Claims 1-3, 9-17, 21-25 stands allowed.

The indicated allowability of claim 19 in previous office action is withdrawn in view of the newly discovering to reference of Smeja '799 as stated above. Therefore, the finality of that action is withdrawn.

Art Unit: 3635

Claim 20 stands objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

### ***Response to Arguments***

Applicant's arguments filed 20 December 2004 have been fully considered but they are not persuasive.

In regard to claim 18 of applicant argues that the Francovitch and Smeja 's invention are considered unrelated art to applicant's invention, and also Smeja teaches away from Francovitch's invention. Examiner disagrees.

Cited art used as the basis for rejection under 35 USC § 103 are only required to disclose the claimed limitations. As discussed above, Smeja '799 and Francovitch '581 are related art to applicant's inventions which both are used for roofing industry to prevent the entry of moisture into the structure, which creates by rain or snow. Therefore, it is obvious to one ordinary skill in the art to modify the base of Smaje's invention by Francovitch in order to reduced the cost of material. Also, as stated above Smeja discloses the **"base 10 is preferably a square, although it could be other shapes"**. Therefore, the other shape could be round, because it reduces the cost of material.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nahid Amiri whose telephone number is (571) 272-6839. The examiner can normally be reached on 8:30-5:30. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl Friedman can be reached on (571) 272-6842. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 3635

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Nahid Amiri  
Examiner  
Art Unit 3635  
February 17, 2005



**BRIAN E. GLESSNER**  
**PRIMARY EXAMINER**